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C O N F I D E N T I A L SECTION 01 OF 02 GENEVA 000684

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SUBJECT: ISRAEL TO TRY NEW TACK ON GOLDSTONE REPORT, UPSET WITH PILLAY'S REPORT

Classified By: CDA Douglas M. Griffiths, reasons 1.4 (b) and (d).

¶1. (U) This is an action request. See para 6.

Summary

¶2. (C) For the first time since the creation of the Human Rights Council (HRC), Israel is considering engaging in substantive negotiations on a resolution about the Palestinian territories. The resolution, if tabled, would respond to the anticipated report by the Fact Finding Mission to investigate the Gaza conflict ("Goldstone Report") established by the HRC during its Ninth Special Session held in January of this year. Israel has decided it will either work with the European Union and (assuming we engage) the United States to propose amendments to a likely draft resolution by the Palestinians or related group, or encourage a counter-resolution that the EU or another delegation could present. As the USG has not negotiated similar resolutions in the past, Post seeks guidance on U.S. posture in light of this new Israeli approach.

¶3. (C) Separately, Israel is deeply disappointed with the High Commissioner's August 14 report on the situation in Gaza, drafted as a result of the HRC's resolution resulting from its Ninth Special Session. Despite multiple discussions with the High Commissioner and her staff, Israel found that that the report failed to correct almost all of the factual errors and misrepresentations they brought to her direct attention several times. The GOI has consequently decided to suspend its already limited interaction with the Ramallah field office of the Office of the High Commissioner for Human Rights (OHCHR), although Israel will continue its budding dialogue with High Commissioner Pillay. End Summary.

Testing the HRC Waters

¶4. (SBU) Israeli Political Counselor Walid Abu-Haya and Israeli Mission Legal Officer Amanda Grudinskas met with PolCouns and Mission Legal Advisers on August 14. Abu-Haya informed us that Israel had not yet received an advance copy of the report by the Fact Finding Mission for the Conflict in Gaza, which Justice Richard Goldstone will present at the 12th Session of the Human Rights Council this September. Reportedly, however, the Israeli Mission in The Hague has learned that the first draft won't be released until September, leaving the countries concerned very little time to provide input before Goldstone officially presents his report on September 29. Abu-Haya said he expected his delegation would make a statement at the HRC in reply to Goldstone's report presentation. Although he could not predict the content or tone of the report and even allowed that "Goldstone may surprise us (positively)," Abu Haya thought the GOI would use its remarks to outline the efforts

it has made to investigate alleged abuses and express concerns about Goldstone's public hearings (the Gaza hearings were widely publicized, contrary to the Geneva hearings).

¶15. (C) Abu-Haya said that Israel was preparing to engage in negotiations on the expected follow-up resolution that the Palestinian Observer or other delegations, such as the Organization of the Islamic Conference (OIC), would almost inevitably draft as a follow-up to the Goldstone report.

Abu-Haya said his capital had informed him that Israel would take one of two approaches: 1) work with EU members and the U.S. to present amendments to the anticipated OIC/Palestinian text, or 2) work with the Swedish EU Presidency to promote a counter-resolution to an eventual OIC or Palestinian draft. Israel's bottom line is that they do not/not want the issue or discussion of the Goldstone report to move outside the HRC and migrate into other fora, such as UNGA. Engagement by Israel on the Goldstone report resolution would mark the first time that Israel has participated in such negotiations.

He said the GOI would use this effort as a "test case" to determine if it should engage more broadly on Middle East resolutions in the HRC. Abu-Haya reiterated the basic message they have made over the past several weeks in connection with the GOI's own newly-released report on the Gaza Operation: in engaging on a resolution, Israel is not seeking a resolution that reflects positively or sympathetically on Israel. To the contrary, Israel welcomes an opportunity to openly and honestly discuss the issue, but in a manner that represents fairly the responsibilities and obligations of both sides.

¶16. (U) The USG has historically not engaged on the many HRC Middle East resolutions. Post requests Washington guidance

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on USG's engagement posture with respect to an expected resolution on the Goldstone Report and on other OPT-related resolutions that may arise during the upcoming HRC session in light of Israel's decision.

Israel Displeased with Pillay's Gaza Report

¶17. (SBU) On August 14, High Commissioner for Human Rights Navi Pillay released the advanced version of her report on the Gaza conflict, a report called for by HRC Resolution S-9/1 (http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/a%20hrc%2012%2037_AEV.pdf). The report was originally scheduled for presentation at the June HRC session, but Pillay delayed its release after Israel intervened with her to allow more time for responses by the country concerned. Like the Goldstone report, the High Commissioner's report will be presented at the HRC's September session.

¶18. (C) Abu-Haya explained in detail the fruitless efforts the GOI had undertaken to work with Pillay and her staff to improve and correct the report since June. Despite noting numerous factual errors and what Israel views as misrepresentations, Pillay submitted the report without taking into account most of Israel's input, which included clarification on applicable legal standards, factual corrections, and policy points. According to Abu-Haya and Grudinskas, the report also selectively employs a self-imposed timeframe for reporting, claiming that it only reviews the situation in Gaza through April 2009; nevertheless, the report goes on to include input by selected NGO's on events that took place after April, while ignoring counter-arguments by the likes of Human Rights Watch and other NGOs that reported on Hamas actions in the same time period. They expressed dismay that Pillay appeared as though she had not read the report, which they believe - and have some evidence to suggest - the OHCHR field office in Ramallah drafted. Israel's ambassador in Geneva told the Charge that he met twice privately with Pillay in an effort to educate her on the report's many errors. He said that the conversations were remarkably cordial. Pillay acknowledged

the weaknesses of the report, but was disappointingly passive in explaining that she was compelled to release the report, even though she acknowledged that it was flawed. As a consequence, Abu Haya told PolCouns separately, the GOI would cease its already limited contact with the OHCHR Ramallah Office. They would nonetheless continue to pursue the dialogue they have recently begun with the High Commissioner.

Comment

¶9. (C) As Israel is in the early phases of developing this new approach, it remains to be seen how publicly engaged they will want to be on a Goldstone follow-up resolution, if they will actually sit in the informal negotiations, or if they will opt to provide their input through and seek the support of friendly delegations. Regardless, Israeli engagement, even if done vicariously through the EU or by asking for U.S. support, could signal a shift in Israel's approach to the HRC and leave open the door for its broader participation on Middle East resolutions. Without overstating the case, such engagement could provide an opportunity to begin bridging one of the many divides in the Human Rights Council. End Comment.

GRIFFITHS